

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHEN WHITEWAY,
Plaintiff(s),

Case No. C-05-2320 SBA (JCS)

v.

**ORDER DENYING MOTION TO
COMPEL** [Docket No. 175]

FEDEX KINKO'S OFFICE AND PRINT
SERVICES, INC.,
Defendant(s).

The parties filed a joint letter dated June 15, 2007, reflecting a meet-and-confer session with respect to Plaintiff's Motion to Compel [Docket No. 175].

The parties have reached certain agreements with respect to supplementation reflected on page one of their joint letter. The Court ORDERS the parties to comply with the agreements reached in their meet-and-confer session.

The remainder of the Motion to Compel is untimely. In setting a new schedule for the case on April 6, 2007, the Court indicated that the discovery cutoff had already been set in the case and that the parties were required to schedule motions regarding discovery so that they could be heard "before the above discovery cutoff." April 6, 2007 Order at 1. The discovery deadline in this case was set by the Court in an order signed on March 16, 2007. That order set a general discovery cutoff of March 21, 2007, and indicated that the last day to file and notice any motion related to general discovery would be April 15, 2007.

Under any interpretation of these orders, Plaintiff's filing of the instant motion on May 2, 2007, was untimely. First, to the extent that the April 6th Order intended to include not just the discovery cutoff, but also the deadline for any motion to compel included in the March 16 Order,

1 that April 15th deadline was long past by the time this motion was filed. Alternatively, the April 6th
2 Order clearly reflects the Court's intent that any motion to compel had to actually have been heard
3 and decided by the March 21, 2007 deadline. Finally, if one were to look solely at the Local Rules,
4 motions to compel with regard to general discovery must filed not later than seven (7) court days
5 after such discovery cutoff. Local Rule 26-2. Under this analysis, the instant Motion to Compel
6 would have had to have been filed not later than March 30, 2007. Under any reasonable
7 interpretation, this Motion is untimely. Accordingly, there was no excusable neglect, and the
8 Motion to Compel is DENIED.

9 IT IS SO ORDERED.

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11 Dated: June 21, 2007

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14 Joseph C. Spero
15 United States Magistrate Judge
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